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OFFICE OF PETITIONS

In re Application of
Edwin K. RUNYON
Application No.: 09/848,158
Filed: May 3, 2001
Atty Docket No.: 74953/11664

DECISION ON PETITION

UNDER 37 CFR 1.181

This decision is in response to applicant's petition to revive under 37 CFR 1.137(b) filed 21 December 2005 in the United States Patent and Trademark Office (USPTO). For the reasons stated below, the petition is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment. The \$1500.00 petition fee will be refunded to deposit account number 19-2179.

The above-identified application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice Of Allowance mailed April 27, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned at midnight on July 28, 2005.

On 21 December 2005, applicant filed the present petition to revive, including in the filing was a copy of a facsimile response of 22 June 2005.

37 CFR 1.8(b) states:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice the correspondence will be considered timely filed if the party who forwarded the correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

MPEP 711.03(c) details that as stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 CFR 1.8).

While applicant has not provided a statement with firsthand knowledge of the fax transmission, applicant has included a copy of the auto-reply facsimile transmission from the USPTO and counsel has attested that the presently filed materials are true copies of the papers originally faxed on 22 June 2005. Thus, applicant has satisfied items all three items above and it is proper to **GRANT** applicant's petition under 37 CFR 1.181 to withdraw the holding of abandonment.

Accordingly, the issue and publication fee payments are accepted as having been timely paid.

The application is being referred to the Office Of Publications.

Telephone inquiries concerning this decision should be directed to the undersigned.



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